The contract was therefore a Pennsylvania contract, and the law of Florida would have no effect. *Northampton, etc. Ins. Co.* v. *Tuttle*, 40 N. J. L. 476; *Commonwealth, etc. Ins. Co.* v. *Knabe Co.*, 171 Mass. 265, 50 N. E. 516; *Seamans* v. *Knapp-Stout & Co.*, 89 Wis. 171, 61 N. W. 757. *Cf. Equitable Life Assurance Society* v. *Clements*, 140 U. S. 226; *Hooper* v. *California*, 155 U. S. 648. Furthermore, the United States Supreme Court has construed section 2765 of the Florida statutes as not raising special agents with limited authority into general agents. *Mutual Life Insurance Co.* v. *Hilton-Green*, 241 U. S. 613. It would seem, therefore, that the insurer should not have been charged with the broker's knowledge and assent in this case.

MINES AND MINERALS — OIL LEASE — EFFECT OF PARTITION OF OIL LAND ON THE RIGHT TO RECEIVE ROYALTIES. — The owner of land gave an "oil lease" to another, granting him the exclusive right to explore for oil on the land, and if the same be found, to remove it, in consideration of the payment of a royalty of one-eighth of the oil produced. The landowner died, and, before the lessee drilled for oil the heirs brought a bill for the partition of the land, and the land was accordingly partitioned among them. Nothing was said in the bill or in the decree about the oil lease. The lessee then drilled for and produced oil on the land of some, but not all, of the heirs, and those heirs on whose land no oil was produced brought a bill to have the royalties divided among all the heirs. *Held*, that the royalties should be so divided. *Campbell* v. *Lynch*, 94 S. E. 739 (W. Va.).

For a discussion of this case, see Notes, pages 884–85.

QUASI-CONTRACTS — TAXATION — MONEY PAID UNDER DURESS OR COMPULSION OF LAW. — A statute imposing an annual tax upon each company doing business in the state provided that if not paid when due five per cent should be added to the amount of the tax, together with interest to constitute a lien on the company's realty with the state. Plaintiff paid the tax under protest to prevent imposition of the penalty, and without waiving the right to claim no such tax was due. *Held*, that payment was made under duress and could be recovered. *Underwood Typewriter Co.* v. *Chamberlain*, 102 Atl. 600 (Conn.).

The rule is well settled that taxes voluntarily paid, even though the payment was made under protest, cannot be recovered. *Bank of Kentucky* v. *Stone*, 88 Fed. 383, affd. 174 U. S. 799; *Railroad Company* v. *Commissioners*, 98 U. S. 541. Under what circumstances the payment will be regarded as involuntary the courts are not agreed upon. Generally they have held that it must appear that the payment was made to release the person or property from detention, or in consequence of a threat of immediate arrest or seizure of goods. *Preston* v. *Boston*, 12 Pick. (Mass.) 7; *Lange* v. *Soffell*, 33 Ill. App. 624; *Detroit* v. *Martin*, 34 Mich. 170. It is but a proper qualification of this doctrine to regard as involuntary a payment made to avoid the onerous penalties bound to attach if the tax is not paid, and to prevent a costly interference in the business. Authority supports this view. *Ratterman* v. *Express Co.*, 49 Ohio St. 608, 32 N. E. 754; *Atchison, etc. Ry. Co.* v. *O'Connor*, 223 U. S. 280; *Strange Co.* v. *City of Merrill*, 134 Wis. 514, 115 N. W. 115.

SURETYSHIP — SURETY'S DEFENSES: ABSENCE, EXTINCTION, OR SUSPENSION OF THE PRINCIPAL'S OBLIGATION — FRAUD ON PRINCIPAL NO DEFENSE TO SURETY. — A creditor, by fraud, induced the debtor to give him a certain bond. The surety on the bond was ignorant of the fraud. *Held*, that the fraud on the principal was no defense to the surety. *Ettlinger* v. *National Surety Co.*, 58 N. Y. L. J. 751.

Ordinarily a defense to the principal is a defense to the surety. *Griffith* v.

Sitgreaves, 90 Pa. 161. See BRANDT, SURETYSHIP, 3 ed., § 163. There are, however, several well-recognized exceptions. Thus, in a proper case the Statute of Limitations may bar action against the principal, while the right to proceed against the surety remains in full force. *Villars* v. *Palmer*, 67 Ill. 204. See 15 HARV. L. REV. 497. Discharge of the principal by operation of law, incapacity of the principal, or a defense of the principal known to the surety when he made his contract, will not generally give the surety a defense. *Wolf* v. *Stix*, 99 U. S. 1; *Cochrane* v. *Cushing*, 124 Mass. 219; *Yale* v. *Wheelock*, 109 Mass. 502; *Elliott* v. *Brady*, 192 N. Y. 221; *Plummer* v. *People*, 16 Ill. 358. But *cf. Osborn* v. *Robbins*, 36 N. Y. 365. To these well-founded exceptions the New York court assumes to add the case of fraud upon the principal in the creation of the principal obligation. The surety is not permitted to set this up in total or partial defense, on the ground that a contract induced by fraud creates a valid, subsisting obligation, binding until rescinded, and subject to rescission by the principal alone. There is some authority in accord with this view. *Henry* v. *Daley*, 17 Hun (N. Y.), 210. See *Evans* v. *Keeland*, 9 Ala. 42, 43. *Cf. St. Louis Perpetual Ins. Co.* v. *Homer*, 9 Met. (Mass.) 39; *Hiner* v. *Newton*, 30 Wis. 640. The clear weight of authority, however, is *contra*. See CHILD, SURETYSHIP, § 133. Some courts give the surety a complete defense. *Bennett* v. *Carey*, 72 Iowa, 476, 34 N. W. 291; *Putnam* v. *Schuyler*, 4 Hun (N. Y.), 166. See *Whitcomb* v. *Schultz*, 223 Fed. 268, 278. Other courts apparently would permit the surety to set up the fraud merely by way of counterclaim. See *Stratman* v. *Stookey*, 3 Ill. App. 336; *Seldner* v. *Smith*, 40 Md. 602; *Jarratt* v. *Martin*, 70 N. C. 459. Where the principal has already rescinded the contract it is everywhere conceded that the surety has an absolute defense. *Hazard* v. *Irwin*, 18 Pick. (Mass.) 95; *Macey, etc. Co.* v. *Heger*, 195 Pa. 125, 45 Atl. 675. Since the surety on payment will be subrogated to a materially different right from that which he had a right to expect, it would seem that he should be given a complete defense, even where the principal has not yet repudiated the contract. *Cf. Swire* v. *Redman*, 1 Q. B. D. 536; *Railton* v. *Mathews*, 10 Clark & F. 934.

SURETYSHIP — SURETY'S DEFENSES: SURRENDER OR LOSS OF SECURITIES — LOSS THROUGH ACT OF CREDITOR AND OPERATION OF LAW. — Plaintiff, the indorsee of a promissory note, sued the maker and attached his property. The attachment was dissolved by the maker's discharge in bankruptcy, in the petition for which plaintiff had joined. Plaintiff sues the indorser. *Held*, that he is liable. *Howard National Bank* v. *Arbuckle*, 102 Atl. 476 (Vt.)

By the weight of authority and on principle, the voluntary release of an attachment lien on the debtor's property discharges the surety. *Maquoketa* v. *Willey*, 35 Iowa, 323; *Spring* v. *George*, 50 Hun (N. Y.), 227. *Contra*, *Barney* v. *Clark*, 46 N. H. 514; *Montpelier Bank* v. *Dixon*, 4 Vt. 587. See 1 BRANDT, SURETYSHIP, 3 ed., § 494. The result reached by the principal case is unquestionably correct in a jurisdiction like Vermont which takes the minority view. Its consistency with the majority rule involves more difficult considerations. A surety's liability is unaffected by bankruptcy proceedings in which the creditor assents to a resolution for accepting a composition. *Guild* v. *Butler*, 122 Mass. 498; *Ex parte Jacobs*, L. R. 10 Ch. 211. This is so even where the assent is absolutely requisite to secure the debtor his discharge. *Browne* v. *Carr*, 7 Bing. 508. Furthermore, a creditor may exercise an option under the bankruptcy law to give up his security and prove for his full claim, or he may institute the proceedings and yet hold the surety. *Rainbow* v. *Juggins*, 5 Q. B. D. 422; *Thornton* v. *Thornton*, 63 N. C. 211. That a subsidiary effect of the discharge in proceedings instituted by the creditor is the dissolution of an attachment lien should not justify application of the voluntary release rule, *supra*. Despite the nature and extent of the creditor's participation, the dis-